IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7302 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI UMEDBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

MR PUJARI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. This petition is filed for an appropriate writ, direction or order, quashing and setting aside the impugned order passed by the Additional Chief Secretary [Appeals] [Revenue], Ahmedabad, Annexure `B' to the

petition, dated October 29, 1987.

2. The petitioner was the occupant of land bearing survey No.667 [part] admeasuring about 7.1/2 gunthas situated in Lakhavad Pati, outside Nadiad town. It was agricultural land in the revenue record. According to the petitioner, surrounded area was converted into non-agricultural land and was used for industrial and residential purpose. According to the petitioner, he was not in a position to make use of land for non-agricultural purpose. He, therefore, made the use of the land for farm house. At that time, there was no highway adjoining the said land. The construction was not pucca construction. However, National Highway No.8 was diverted from the area where construction was made by the petitioner. The proceedings were, therefore, initiated by the Collector under the Bombay Land Revenue Code, 1879 [hereinafter referred to as `the Code'] and by order dated 24th April 1984, Annexure `A' to the petition, it was held that the petitioner has made unauthorised construction to the extent of 186 sq. mtrs. The petitioner was, hence, directed to remove illegal and unauthorised construction within a period of two months at his costs, failing which the authorities would get it removed and the amount would be recovered as land revenue. The said direction was issued to the Mamlatdar by the Collector. It was also ordered that the petitioner would have to pay necessary amount as specified in the order since agricultural land was used for non-agricultural purpose. It appears that thereafter, revision application was filed before the Additional Secretary, who remanded the matter and again the order was passed by the Collector, which was taken again in revision and the order passed by the revisional authority is at Annexure `B'.

4. Reading the impugned order, it appears that the Collector reiterated what was held by him in the earlier order and directed demolition of construction to the extent of 186 sq. mtrs. In the revision application filed by the petitioner, however, the Additional Chief Secretary modified the order passed by the Collector. He not only dismissed the revision application filed by the petitioner, but he also directed summary eviction of the petitioner from the land in question with a view to set an example in the society that there should not be any unauthorised construction by any person in future.

5. When the petition was placed for admission, it was admitted and interim relief was granted by the learned Single Judge (Coram : A.P. Ravani, J. as he

then was) on December 14, 1989. The said order reads as under :-

"Rule. The order passed by the Collector produced at Annexure `A' is not stayed. However, the further direction given by the Secretary for removal of the petitioner from the land in question is stayed, by way of interim relief. It is again clarified that the order passed by the Collector may be implemented. Pendency of this petition shall not be treated as a ground for not implementing the order passed by the Collector. Direct service."

6. Today, the matter is called out for final hearing.

7. Mr.Hathi, learned counsel for the petitioner raised several contentions. He submitted that the authorities have committed an error of law in relying upon the Ribbon Development Rules. He also submitted that, at the time when alleged construction was made, the provision of the Ribbon Development Rules could not have been applied and hence, the order is illegal. He further submitted that, in any case, when the order was passed by the Collector directing removal of construction to the extent of 186 sq. mtrs. and the revision application was filed by the petitioner against the said order, the Additional Chief Secretary has committed error of law apparent on the face of the record in directing summary eviction of the petitioner. He submitted that only section 66 of the Code was invoked by the Additional Chief Secretary and no summary eviction could have been ordered. He, therefore, submitted that the order deserves to be quashed and set aside.

8. Mr.Pujari, learned AGP, on the other hand, supported the order passed by the Additional Chief Secretary. He submitted that it is true that the petitioner had filed a revision application being aggrieved by the order passed by the Collector. He, however, submitted that the Additional Chief Secretary was exercising revisional powers under section 211 of the Code and he had jurisdiction to invoke such powers even suo motu. He further submitted that, in the instant case, a notice was also issued by the revisional authority on October 27, 1986 and the petitioner was afforded an opportunity of hearing. If after such an opportunity, an order was passed by him, it could not be objected by the petitioner.

9. In the facts and circumstances of the case, in my opinion, the petition deserves to be partly allowed. So far as the order passed by the Collector directing removal of unauthorised construction to the extent of 186 sq. mtrs. is concerned, the said order was passed by the Collector and confirmed by the Additional Chief Secretary. Looking to the concurrent findings of fact, it is clear that the said construction was unauthorised. Therefore, neither the Collector nor the revisional authority can be said to have committed any error of law in ordering removal of such construction and the petitioner cannot make a grievance. The order to that extent, therefore, deserves to be confirmed.

10. Regarding order passed by the revisional authority of summarly eviction of the petitioner from the land in question, from the record, it appears that notice was issued under section 66 of the Code. Section 66 of the Code reads as under :-

"Section - 66 ::: If any land referred to in section 65 or section 65A be used for any purpose other than the purpose for which such land is assessed or held without the permission of the Collector being first obtained, or before the expiry of three months referred to in section 65 or despite refusal of permission during the said period of three months, then, without prejudice to the occupant's liability to pay the new assessment leviable under section 48 or the conversion tax leviable under section 67A -

[a] the occupant and any tenant or other person holding under or through him shall be liable to be summarily evicted by the Collector from the land so used and from the entire survey number or sub-division of the survey number of which it mays form a part; and

[b] the occupant shall also be liable to pay for the period during which the said land has been so used, such fine as the Collector may, subject to the general orders of the State Government, direct.

Any tenant of any occupant or any other person holding under or through an occupant, who shall without the occupant's consent use any such land for any such purpose, and thereby render the

> said occupant liable to the penalty aforesaid, shall be responsible to the said occupant in damages."

11. It is true that over and above the order passed by the Collector, he could have invoked provision of Section 211 of the Code and accordingly, notice could have been issued and it was accordingly issued. He, however, does not refer what proceedings he had initiated and how he had come to the conclusion for summary eviction of the petitioner.

12. In the light of the above facts and circumstances, in my opinion, the order summarily evicting the petitioner deserves to be set aside. It is, however, clarified that it is open to the revisional authority, if it is satisfied that some actions are required to be taken for summary eviction of the petitioner, then to take such action in accordance with law, after affording opportunity to the petitioner and disposal of this Special Civil Application would not come in his way in taking such action.

13. This petition is accordingly disposed of. Rule is made absolute to the extent indicated above, with no orders as to costs.

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